

## **REMARKS / DISCUSSION OF ISSUES**

Claims 1-17 are presently pending. Claims 1 and 8 are independent.

Unless indicated to the contrary, claims are amended to eliminate European-style phraseology and present the claims for U.S. prosecution.

Applicants request that the Examiner states whether the drawings are accepted.

### **Rejections under 35 U.S.C. § 102**

Claims 1-17 are rejected as being anticipated by Bryant (U.S. 1,148,376). For at least the reasons set forth herein, Applicants respectfully submit that all claims are patentable over the applied art.

At the outset Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). **Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference.** *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

Claim 1 is drawn to a personal care apparatus and features:

*"... an air pump having a suction piece and a motor for exerting a suction effect on the human skin..."*

Applicants note that the applied art includes a mouthpiece 11 and not a motor as claimed. Therefore, the applied art fails to disclose each and every element of claim 1. As such, claim 1 is patentable over the applied art. Moreover, claims 2-7, which depend from claim 1, are patentable for at least the same reasons.

Claim 8 is drawn to a suction piece for a personal care apparatus. The suction piece includes:

*at least one circumferentially defined suction aperture for suction-based interaction with the human skin, wherein the suction piece in the area of the suction aperture is designed to form a skin protuberance in a suction-based interaction with the skin;*

*at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable and designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin;*

*at least two sealing parts of elastically deformable design extending to the suction aperture and defining the suction aperture, each sealing part being situated between two mutually adjacent suction piece sections and having an airtight connection to the two mutually adjacent suction piece sections.*

The germane portion of the Office Action states:

As to claims 1 and 8, Bryant discloses a personal care apparatus with an air pump 10, a suction piece 18, an aperture (interior of 18, Figure 3), two suction piece sections 11 (flange 11 has upper and lower sections) designed to exert a radial force on a skin protuberance (lines 70-82); at least two sealing parts 20, 12 between two mutually adjacent suction piece sections and having an airtight connection to the mutually adjacent suction piece sections in that they both impede the flow of air.

A comparison between the features of the claims and the captioned portion of the claim reveals that certain features were not even addressed in the Office Action. For instance, the claim features that *the two suction piece sections [are] radially adjustable*.

Therefore the Office Action fails to articulate a rejection in a clear manner and thus deprives Applicants the opportunity at the earliest instance to provide evidence of patentability. Applicants cite MPEP § 706 and submit that the present rejection fails to comply with this section.

For at least the reasons set forth above, Applicants respectfully submit that a proper rejection of claim 8 has not been made. Therefore claim 8 is patentable. Moreover, claims 9-17, which depend from claim 8, are also patentable for at least the same reasons.

### **Conclusion**

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:

Phillips Electronics North America Corp.

A handwritten signature in black ink, appearing to read 'WSF', is written over a horizontal line.

by: William S. Francos (Reg. No. 38,456)

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